IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/11/2003

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.2348 OF 2002 AND WRIT PETITION NO. 2349 OF 2002

N. Arumugam .. Petitioner in both WPs

-Vs-

1. The University of Grants
Commission,
rep. by its Secretary
Bahadur Shah Zafar Marg
New Delhi 110 002.

2. The Registrar,
The Ghandigram Rural Institute
(Deemed University), Ghandhigram,
Dindigul District. .. Respondents in WP.2348/02

1. The Registrar,
The Ghandigram Rural Institute
(Deemed University), Ghandhigram,
Dindigul District.

2. The University of Grants
Commission,
rep. by its Secretary
Bahadur Shah Zafar Marg
New Delhi 110 002. .. Respondents in WP.2349/02

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari and Certiorarified Mandamus respectively, as stated therein.

!For Petitioner : Ms.K. Suguna

For Respondents : Mr.J. Madanagopal Rao,
SCGSC

:J U D G M E N T

Both the writ petitions being inter-linked, heard together and shall be governed by this common decision.

2. In W.P.No.2348 of 2002, the petitioner has prayed for issuing writ of certiorari for quashing the order dated 5.10.2000 issued in Ref.No.E3-1/94 (PS)by the University Grants Commission, the first respondent and further for quashing the order issued by the Gandhigram Rural Institute, dated 7.1.2002 in Ref.No.435/Est.2/2001-2002/4301.

3. Prayer in the connected W.P.No.2349 of 2002 is to quash the order passed by Gandhigram Rural Institute, dated 2.1.2002 in Ref.No.435/Est.2/2001-2002/4231.

4. For convenience, the University Grants Commission shall be referred to as the first respondent and the Gandhigram Rural Institute shall be referred to as the second respondent hereinafter.

5. The second respondent was initially having the status of a college. At that stage, the petitioner was appointed as Librarian in the pay scale which was similar to that of a Lecturer in Tamil Nadu State Government pattern college. In course of time, the second respondent become a deemed University with effect from 3.8.1976. The second respondent receives 100% grant from the first respondent. From January 1986, the second respondent followed the UGC staff pattern. As per the staff pattern, at that stage, the post of Librarian carried the pay scale of Rs.4500-150-7300 at par with Professor cadre, the post of Deputy Librarian carried the pay scale of Rs.3700-125-5700 at par with Reader cadre and the post of Assistant Librarian carried the pay scale of Rs.2200-75-2800-100-4000 at pat with Lecturer cadre. In course of time, the first respondent has sanctioned the post of Deputy Librarian in the pay scale equivalent to that of a Reader cadre. While the matter stood thus, Advertisement dated 25.6.1989 was issued for filling up the post of Deputy Librarian. The petitioner claims that since he was holding the post of Librarian and the scale of pay for the Deputy Librarian was higher, he had raised objection, but on the oral instructions of the then Vice Chancellor, he had applied for the said post with the understanding that he would continue to work with the designation of Librarian. Thereafter, the petitioner was selected and was allowed the pay scale of Deputy Librarian, but continued to hold the designation of the Librarian on the basis of the proceedings of the Syndicate. Subsequently, he made a representation to revise his pay scale at par with the pay scale applicable to Librarian. The second respondent, at that stage, issued an order indicating that the petitioner should be designated as Deputy Librarian. Against such order, the petitioner filed W.P.No.4694 of 1995. The said writ petition was allowed on the ground that re-designation of the petitioner as Deputy Librarian had been done without following the principles of natural justice.
While the matter stood thus, the first respondent by letter in Ref. No.F3-1/94(PS) dated 5.10.2000 issued instructions indicating that the age of superannuation of the Deputy Librarian is 60 years. On the basis of such

letter issued by the first respondent, the second respondent under the impugned letter dated 7.1.2002 in Ref.No.435/Est.2/200 1-2002/4301 informed the petitioner that he has to retire from service on attaining the age of 60 with effect from 28.8.2002. As already indicated, W.P.No.2348 of 2002 has been filed for quashing these two directions. Impugned order dated 2.1.2002, which has been challenged in the connected W.P.No.2349 of 2002, is to the effect that the petitioner should use the designation of Deputy Librarian and not the designation of the Librarian. This is mainly on the footing that the post of Librarian, as per the first respondent, carries the pay scale of Professor and such post has not been sanctioned.

6. Separate counter affidavits have been filed by the respondents 1 and 2 justifying the action taken by them.

7. The following questions crop up for the decision :-
(1) Whether the petitioner has the right to be designated as Librarian and, if so, whether he would be entitled to the emoluments applicable to a Librarian, which is similar to that of a Professor ?
(2) Even assuming that the petitioner would not be designated as Librarian and would continue to be designated as Deputy Librarian, whether he should be allowed to continue in service till the age of 62 ?

8. So far as the first question is concerned, it is apparent that initially the petitioner had been appointed as □Librarian□ in a college and the scale of pay payable was that of a Lecturer. When the college became a deemed university, the petitioner continued in the said scale of pay and in course of time, UGC staff pattern was adopted. There were three posts, namely, Librarian in the pay scale of Professor, Deputy Librarian in the pay scale of Reader and Assistant Librarian in the pay scale of Lecturer. In 1989, a post of Deputy Librarian was sanctioned for the second respondent which had become a deemed university by then. Even though the petitioner was apparently designated as □Librarian□, it is obvious that he was getting the scale of pay applicable to a Lecturer and since the scale of pay for the approved post of Deputy Librarian was higher, being at par with the scale of pay applicable to the post of Reader. The petitioner after some initial hesitation applied for the post and got selected and he was given the benefit of scale of pay applicable to Deputy Librarian. On the basis of the representation made by the petitioner, he continued to be designated as Librarian, even though in reality he was Deputy Librarian being allowed to draw scale of pay applicable to Deputy Librarian equivalent to Reader. In other words, from that stage onwards, he was the Deputy Librarian even though euphemistically designated as the Librarian. This position had continued, but when the petitioner demanded that he should be paid the pay scale of a Professor, the second respondent thought it proper to re-designate him as Deputy Librarian, which was successfully challenged in the earlier W.P.No.4694 of 1995. In the said decision, however, it was made clear that the order had been set aside merely because principles of natural justice had not been followed and it was left open to the second respondent to consider the matter afresh after giving opportunity to the petitioner. Thereafter, the second respondent after giving opportunity to the petitioner, passed an order indicating that the petitioner should be re-designated as Deputy Librarian.

9. On going through the materials on record and after hearing the counsels appearing for the parties, I do not find any illegality or irregularity in such order passed by the second respondent. If the petitioner's stand that he should be considered as a 'Librarian' is to be accepted, there is no logic in the petitioner applying for the post of Deputy Librarian. It is evident that the University has permitted to use the designation as Librarian as a special concession to the petitioner's sentiment and not as a recognition of his right. It has to be remembered that the post of Librarian in the pay scale of Professor is yet to be sanctioned for the deemed university by the UGC, the first respondent, and therefore, it would not be proper to uphold the contention of the petitioner to designate him as a full-fledged Librarian. The contentions raised in WP.No.2348 of 2002 cannot be accepted.

10. The question raised in the connected writ petition stands on a different albeit comparatively surer footing. To appreciate the questions involved, it is necessary at this stage to refer to Notification of the University Grants Commission dated 24.12.1998. This relates to notification on Revision of pay scales, minimum qualifications for appointment of teachers in Universities & Colleges and measures for the maintenance of standards.

11. 16.0.0 of the aforesaid notification relates to superannuation and re-employment of teachers. 16.1.0 and 16.2.0 being relevant are extracted hereunder in extenso :-

" 16.0.0 SUPERANNUATION AND RE-EMPLOYMENT OF TEACHERS

16.1.0 Teachers will retire at the age of 62. However, it is open to a University or a college to re-employ a superannuated teacher according to the existing guidelines framed by the UGC upto the age of 65 years.

16.2.0 Age of retirement of Registrars, Librarians, Physical Education personnel, Controllers of Examinations, Finance Officers and such other university employees who are being treated at par with the teachers and whose age of superannuation was 60 years, would be 62 years. No re-employment facility is recommended for the Registrars, Librarians and Directors of Physical Education."

12. Subsequently, a letter was written by the Deputy Secretary on behalf of the UGC to the second respondent, which is extracted hereunder :-
" . . . The Commission in its meeting held on 16th August, 2000 discussed the issue of age of retirement of Assistant Registrars, Deputy

Registrars, Assistant Librarians, Deputy Librarians, Assistant Director of Physical Education & Deputy Director of Physical Education in the University system and declared as under :

" The Commission decided that the age of retirement of Assistant Registrar, Deputy Registrar, Assistant Director of Physical Education, Deputy

Director of Physical Education, Assistant Librarian and Deputy Librarian shall be 60 years. It was further decided that if any institution has so far extended the superannuation age to 62 years in respect of any of the aforesaid category of employees it must with immediate effect be brought down to 60 years. It was further decided that with immediate effect from now the aforesaid category of employees shall superannuate at the age of 60 years.

13. It is the contention of the petitioner that the aforesaid impugned letter issued on behalf of UGC is contrary to the notification dated 24.12.1998 as well as contrary to the letter received from HRD Ministry under letter No.F-49/98-U.I(Pt.) dated 16.11.1999. Under the latter letter it seems HRD Ministry has indicated that library staff shall be treated on par with the teaching staff in respect of age of superannuation. Even though the letter recei ved from the Ministry may not be conclusive in such matters, the notification issued by the UGC in 1998 being a statutory notification has to be implemented. Paragraph 16.2.0, which has already been extracted, relates specifically to the retirement of the Registrars, Librarians, Physical education personnel, Controllers of Examinations and Finance Officers. There is no doubt that such officials would retire at the age of 62 in view of the specific provision made in paragraph 16.2.0. The contention of the petitioner is to the effect that the expression Librarian should also include the Deputy Librarian and Assistant Librarian. Such a contention prima facie has got some merits. However, it is unnecessary to deal with this aspect, as in my opinion, other phrase dealing with other university employees is applicable. It has to be appreciated that the expression such other university employees who are being treated at par with the teachers and whose age of superannuation was 60 years would be 62 years would also be applicable to the Deputy Librarian as per paragraph 16.2.0. Even assuming that the petitioner being a Deputy Librarian may not answer the description Librarian, obviously he comes under the category of other university employees. Therefore, it has to be examined whether the petitioner, being an other university employee, can be treated on par with the teachers.

14. It is the case of the petitioner that he was being treated as a member of the teaching staff and was taking classes and was also the Chairman of Board of Studies. In the counter affidavit filed on behalf of the second respondent it has been asserted albeit grudgingly as follows :- (i) The Library Science course are run from the year 1993-94 only. 3 batches of course were conducted. The course was staggered for a period of three years, and the course was restarted from the academic year 1999-2000. From the above fact it can be seen that the petitioner has handled classes only for a period of 5 years in his total service and not all the years in his service period.

15. It is not disputed that the pay scale of Deputy Librarian is at par with the pay scale of Reader. Since the pay scales were same and the petitioner was also taking classes, it is obvious that the petitioner was being treated at par with the teachers not only so far as the salary was concerned but also in respect of an important duty. It is of course true that in the counter affidavit the second respondent has indicated that unlike the teachers, the person holding the post of non-academic staff, namely, Assistant

Director of Physical Education, Assistant Registrar, Assistant Librarian did not have the benefit of Career Advancement Scheme. In the present case, we are not concerned with the question as to whether these persons are to be treated as teachers for all the purpose. The only question is to be considered is the age of superannuation.

16. From the UGC notification it is apparent that the intention of the UGC is to allow the persons involved in teaching to retire at the age of 62. Since under the second respondent, a course relating to Library Science has been introduced and the petitioner had been entrusted with the job of teaching, it would be improper to hold that his job was not a similar to that of a teaching staff.

17. For the aforesaid reasons, I am inclined to hold that the age of superannuation of the petitioner should be taken as 62 years. It is however made clear that where the Deputy Librarian of a University is not assigned the job of teaching, such Deputy Librarian would not be entitled to continue till the age of 62 and only where the Deputy Librarian is involved in teaching, the retirem ent age of 62 will be applicable. In such view of the matter, the petitioner should be allowed to continue as the Deputy Librarian till he attains the age of 62 .

18. The next question is as to whether the petitioner should be paid the salary for the period which he was not actually worked and retired at the age of 60.

19. The petitioner has approached the High Court immediately, but no stay was granted. The second respondent is an educational institution. It is of course true that money has to be paid by the UGC, the first respondent. Even though the petitioner was not at fault, it may not be proper to give him the entire financial benefit as he had not actually worked.

20. Having regard to all these aspects, I am of the considered opinion that for the period from discontinuance of the petitioner at the age of attaining 60 till reinstatement pursuant to the present direction, the petitioner should be paid 50% of all the emoluments payable, but the petitioner would be deemed to be in service throughout and such period shall be counted towards service for all other purpose. The petitioner shall be paid full amount from the date of reinstatement till his retirement at the age of 62. The direction regarding reinstatement should be complied within a period of six weeks from the date of receipt of the order. The emoluments for the past period should be paid within three months.

21. In the result, W.P.No.2348 of 2002 is rejected and W.P.No.2349 of 2002 is allowed in part. No costs.

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To

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